

08CV138

97CV5127

February 13, 2008

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UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY  
Civil Action No. 07-CV-138

In Regard to the Matter of:

Bayside State Prison  
Litigation

Opinion and Report  
of the  
Special Master

VICTONIO GOLDEN,

-vs-

WILLIAM H. FAUVER, et al,

Defendants.

\* \* \* \* \*  
WEDNESDAY, FEBRUARY 13, 2008  
\* \* \* \* \*

BEFORE THE HONORABLE JOHN W. BJSSELL, SPECIAL MASTER

MASTROIANNI & FORMAROLI, INC.  
Certified Court Reporting & Videoconferencing  
251 South White Horse Pike  
Audubon, New Jersey 08106  
856-546-1100

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10 A P P E A R A N C E S:

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Transcript of proceedings in the above  
matter taken by Theresa O. Mastroianni, Certified  
Court Reporter, license number 30X100085700, and  
Notary Public of the State of New Jersey at the  
United States District Court House, One Gerry Plaza,  
Camden, New Jersey, 08102, commencing at 9:30 AM.

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1 JUDGE BISSELL: I turn now to the  
2 decision regarding the case brought by Victorio  
3 Golden, docket number 08-138 and ask that that action  
4 also be reopened for the purpose of generating this  
5 transcript.

6 Once again, I am proceeding pursuant to  
7 the parameters and perimeters of instructions to me  
8 as set forth in the Order of Reference to a Special  
9 Master and the Special Master Agreement.

10 I incorporate by reference the jury  
11 instructions as set forth in the Walker and Mojias  
12 charges as setting forth the underlying principles of  
13 law against which these facts have been measured to  
14 the extent they are applicable to the particular  
15 issues in this case. And this decision is being  
16 issued in compliance with the obligation of a written  
17 report as contemplated by the Special Master  
18 Agreement, employing Local Civil Rule 52.1 for the  
19 issuance thereof.

20 Victorio Golden describes a hit on his  
21 head and a punch in his eye as having happened to him  
22 in lockup upon his return from a court line date late  
23 in August and shortly before his release from Bayside  
24 on or about September 5, 1997.

25 The injuries were described as a hit on

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1 the left back side of his head causing scarring, and  
2 a punch to the left eye. And, indeed, those injuries  
3 are both described and mentioned in the relatively  
4 contemporaneous written statements that he gave which  
5 have been entered into evidence as D-40 and D-41.

6 However, there are significant  
7 discrepancies between the descriptions in those  
8 contemporaneous documents and his testimony here in  
9 court.

10 He does, indeed, associate the events  
11 involved with the officer who was with him on his  
12 court line date as well as on previous occasions.  
13 However, in those documents, he does not place his  
14 eye injury at the time stated in his testimony here  
15 in court, but rather at a considerably earlier time  
16 period in the month of August of 1997.

17 There are other discrepancies between  
18 the report and his testimony here in court which I'm  
19 not going to dwell on at any great length.

20 His testimony in court, therefore, was  
21 really impeached by placing the events of both the  
22 hit which caused the bleeding on his head and his eye  
23 injury as taking place back in the lockup upon his  
24 return from the court line proceeding rather than  
25 earlier.

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1                   Once again, there are other incredible  
2     aspects of his testimony. The duration and severity  
3     of his headaches for a ten-and-a-half year period,  
4     resulting from a single blow to the head such as  
5     this, I do not find credible.

6                   And I might say I did examine the scar,  
7     its noticeable, it's in the area that he described, I  
8     have no reason to think that it didn't occur somehow  
9     and somewhere, but I'll have more to say about that  
10    later.

11                  Also, the delayed designation of  
12    Officer Walker and the absence of any credible  
13    evidence to identify him which, of course, led to my  
14    direction that no matter what the outcome of this  
15    case there would be no recommended judgment against  
16    Officer Walker, has some impact upon the Plaintiff's  
17    credibility generally.

18                  As far as this record is concerned, the  
19    reference to Officer Walker came out of the blue.  
20    Indeed, in reviewing the transcript of post trial  
21    motions, apparently the references before then were  
22    to an Officer Morris who wasn't even mentioned here.

23                  To reiterate, I find that the evidence  
24    which he endeavors to describe here in court as  
25    having taken place only upon his return to the

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1 lockup, after his court line hearing, is fatally  
2 inconsistent with the contemporaneous statements  
3 which he offered regarding the placing of both his  
4 head and eye injuries on a time line.

5 I find the testimony here in court  
6 contrived, albeit for no particularly apparent  
7 reason. But I have to measure it as it comes in  
8 terms of its credibility and whether the plaintiff  
9 has discharged his burden of proof by a preponderance  
10 of the credible evidence. That trial testimony was  
11 not credible and was impeached by his prior  
12 statements which, of course, were offered for  
13 impeachment purposes. Even though the eye injury was  
14 observed upon his release and led to the generation  
15 of D-40 and D-41 and the interviews by Internal  
16 Affairs, I conclude nevertheless that there was no  
17 adequate competent proof of exactly how, when, why  
18 and by whom those injuries, in fact, occurred.

19 Finally, although not every item of  
20 evidence has been discussed in this opinion/report,  
21 all evidence presented to the Special Master was  
22 reviewed and considered.

23 This plaintiff, therefore, has failed  
24 to discharge his burden of proof and it will be my  
25 recommendation in this written report that Mr. Golden

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1 has not sustained his Eighth Amendment claims and  
2 hence will have no recovery against anyone in his  
3 case. I recommend in this report that the District  
4 Court enter a verdict of no cause for action.

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## C E R T I F I C A T E

I, Theresa O. Mastroianni, a Notary Public and  
Certified Shorthand Reporter of the State of New  
Jersey, do hereby certify that the foregoing is a  
true and accurate transcript of the testimony as  
taken stenographically by and before me at the time,  
place, and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a  
relative nor employee nor attorney nor counsel of any  
of the parties to this action, and that I am neither  
a relative nor employee of such attorney or counsel,  
and that I am not financially interested in the  
action.

Theresa O. Mastroianni

Theresa O. Mastroianni, C.S.R.

Notary Public, State of New Jersey

My Commission Expires May 5, 2010

Certificate No. XT0857

Date: February 19, 2008



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